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BEFORE THE
POSTAL RATE COMMISSION

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INTERNATIONAL MAIL REPORT

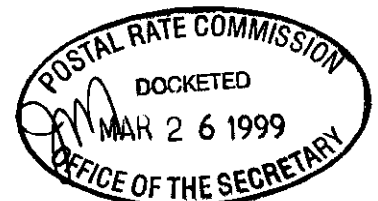
DOCKET NO. IM99-1

MOTION OF UNITED PARCEL SERVICE TO PROVIDE
PUBLIC ACCESS TO INTERNATIONAL MAIL DATA
REQUESTED IN ORDER NO. 1228 AND FOR
OPPORTUNITY TO PROVIDE PUBLIC COMMENT
(March 26, 1999)

United Parcel Service ("UPS") hereby moves that the Commission (1) provide public access to the international mail data supplied to the Commission by the Postal Service in response to Order No. 1228 and (2) give interested parties a reasonable opportunity to comment on the data after it is made available.

BACKGROUND

On December 16, 1998, UPS petitioned the Commission to institute a rulemaking proceeding to determine the international cost, volume, and revenue data needed to prepare the report required by § 3663 of the Postal Reorganization Act, 39 U.S.C. § 3663. In response, the Commission solicited informal public comments on the matter. Order No. 1226 (January 15, 1999). After reviewing the comments it received, the Commission issued Order No. 1228 on February 16, 1999. In this Order, the Commission set forth a list of information and documents to be provided by the Postal Service so that the Commission could conduct its § 3663 analysis.



The Postal Service responded to Commission Order No. 1228 on March 15, 1999. In its response (at 3), the Postal Service asked the Commission to withhold from public disclosure all of the data supplied to the Commission. The Postal Service based its request on a general claim that most of the requested information consists of "internal documents of a commercially sensitive nature" *Id.* at 2.

UPS opposes the Postal Service's blanket request to withhold from the public all of the information supplied to the Commission. Withholding this information is contrary to a primary purpose of § 3663 -- to ensure the public, including both mailers and competitors of the Postal Service, that the international mail rates the Postal Service charges the American public are fair, and that the Postal Service is not subsidizing its competitive international service offerings with revenues derived from other postal services. Moreover, giving the public access to the data and a reasonable opportunity to comment on it may assist the Commission in making maximum use of the data in the short time available before the Commission's report is due.

Thus, UPS requests that the Commission: (1) make public, to the maximum extent possible and as soon as possible, the information submitted by the Postal Service in response to Order No. 1228; (2) give interested parties access under protective conditions to material which the Postal Service specifically demonstrates to be commercially sensitive; and (3) provide interested parties with a reasonable opportunity to comment on the data after it is made available.

DISCUSSION

United States governmental agencies have a "firm obligation" to "make disclosure to 'any person' of identifiable information and facts in their possession, limited only by certain specific exceptions." *Ethyl Corp. v. EPA*, 478 F.2d 47, 48 (4th Cir. 1973) (footnote omitted). *See also id.* at 49 (stating that with the adoption of the Freedom of Information Act, disclosure of information is now the rule and secrecy is the

exception). It is generally accepted that this disclosure obligation is to be construed broadly and exemptions from it should be construed narrowly. The policy behind broad disclosure is to promote public access to government information and to enable interested members of the public to pursue their rights against the government. *Werner-Continental, Inc. v. Farkas*, 478 F. Supp. 815, 816 (S.D. Ohio 1979), *aff'd*, 661 F.2d 935 (6th Cir. 1981).

Members of the public unquestionably have a strong interest in reviewing international cost, revenue and volume data in order to protect their rights to fair and equitable postage rates. Without this information, members of the public have no means of ensuring themselves that the Postal Service's international mail rates are fair and that the Postal Service is not subsidizing some or all of its international mail services with revenues from other services. The Postal Service's duty to make this data available to the public is particularly important here, where Congress has specifically required the Postal Service to justify its international rates.

Moreover, the Commission's responsibility under § 3663 is a novel undertaking which must be accomplished in a short period of time. The Commission does not have unlimited resources. In light of its limited resources, the Commission has often relied on insights provided by interested parties to assist it in formulating appropriate methods for allocating costs.

As UPS previously explained in its original petition (at 2) and in its January 29 comments in response to Commission Order No. 1226 (at 6), "maximum participation by interested parties will undoubtedly improve the results," especially given the novelty of the task and the limited time-frame in which to complete it. Indeed, the history of Commission proceedings to evaluate domestic rates has clearly shown that "maximum participation by interested parties has resulted in improved accuracy in determining the costs of the various domestic products provided by the Postal Service." *Id.* at 7. There is no reason to believe that the same would not hold true for international services. On

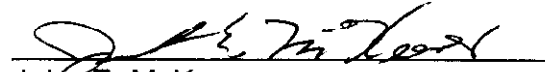
the contrary, soliciting input from interested parties will almost certainly provide the Commission with valuable perspectives on sound international costing principles, thereby assisting the Commission in achieving the purpose of § 3663.

In short, Congress' intent in adopting § 3663 will best be served by making available to the public the international mail data supplied to the Commission. Only in those very limited situations where the Postal Service (1) identifies specific information it believes to be confidential and (2) justifies why such information deserves protective treatment, should the Commission limit access under protective conditions of the type previously used for commercially sensitive materials. Because of the strong presumption in favor of public disclosure of government information, the burden is on the Postal Service to justify the need for protective conditions. If the Postal Service fails to meet this burden, the information should be made publicly available without protective treatment.

WHEREFORE, United Parcel Service respectfully requests that the Commission (1) provide full public access to the international mail data supplied by the Postal Service in response to Order No. 1228 except where the Postal Service identifies specific information to be provided under protective conditions and carries its burden to show why protective conditions are necessary, and (2) give interested parties a

reasonable opportunity to comment on the information provided after it is made available.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John E. McKeever", is written over a horizontal line.

John E. McKeever

Nicole P. Kangas

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CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused the foregoing document to be served on the United States Postal Service by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.

Nicole P. Kangas
Nicole P. Kangas

Dated: March 26, 1999
Philadelphia, PA